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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,238	03/26/2004	Anthony Louis Moffa	04-40126-US	8999

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EXAMINER

MAYO, TARA L

ART UNIT PAPER NUMBER

3671

DATE MAILED: 12/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/811,238

Applicant(s)

MOFFA ET AL.

Examiner

Tara L. Mayo

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings were received on 29 September 2005. These drawings are acceptable to overcome the drawing objection set forth in the last Office Action. Applicant is reminded, however, that new formal drawings are required in response to the PTO-948 mailed 29 March 2005.

Specification

2. The prior objection to the Abstract has been overcome by the new Abstract filed 29 September 2005.

Claim Rejections - 35 USC § 112

3. The prior rejection of claims 1 through 12 under 35 USC §112, second paragraph has been overcome by the response filed 29 September 2005 wherein Applicant clarifies his intention for the scope of the claims to encompass the support alone.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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5. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Haley (U.S. Patent No. 2,589,803).

Haley '803, as seen in Figures 1, 2 and 6, shows a support comprising:
with regard to claim 1,

an open frame (5), wherein said open frame provides for secure attachment of a stretcher to said open frame; and

an adjustable lifting point (20) connected to said open frame, wherein said adjustable lifting point suspends said open frame and rotatably shifts to substantially balance a stretcher respective to said open frame; and

with regard to claim 2,

wherein said adjustable lifting point comprises a plunger mechanism.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 3 through 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haley (U.S. Patent No. 2,589,803) in view of Pettit (U.S. Patent No. 3,780,663).

Haley '803 fails to teach:

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with regard to claim 3,

the plunger mechanism comprising a spring loaded pin and a series of holes;

with regard to claim 4,

the series of holes being about one inch apart;

with regard to claim 5,

wherein said adjustable lifting point is positioned by a constricting pressure mechanism;

with regard to claim 6,

the open frame comprising at least two attachment points;

with regard to claim 7,

the attachment points being hooks;

with regard to claim 8,

the frame comprising two hemispherical arms connected a center rail at the apex;

with regard to claim 9,

the frame being composed of metal, plastic and fiberglass;

with regard to claim 10,

the open frame comprising cables;

with regard to claim 11,

the adjustable lifting point being adjusted by an electrical motor; and

with regard to claim 12,

the adjustable lifting point being controlled by a computing device.

Pettit '663, as seen in Figures 2, 10 and 11, shows a truck (20) for carrying a patient

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support member comprising a spring loaded pin (68, 82) and a series of holes (74, 78), and wherein said spring loaded pin is insertably into any one of said holes, the adjustable lifting point being positioned by a constricting pressure mechanism (68). The device shown by Pettit '663 further comprises at least two attachment points (via element 38) comprising hooks (col. 3, lines 36 through 39), two arms (via element 38) connected to a center rail (12) at their apex, and cables (40).

With regard to claims 3 and 5, it would have been obvious to one having ordinary skill in the art of supports at the time the invention was made to modify the device shown by Haley '803 such that it would include a spring loaded pin and a series of holes as taught by Pettit '663. The motivation would have been to provide the system with a motion dampener.

With regard to claim 4, it would have been obvious to one having ordinary skill in the art at the time the invention was made to determine an optimal distance between the holes through routine experimentation and optimization for the purpose positioning the supporter as desired.

With regard to claims 6 through 8 and 10, it would have been obvious to one having ordinary skill in the art of supports at the time the invention was made to modify the device shown by Haley '803 such that it would include attachment points, arms and cables as taught by Pettit '663 to provide means for desired weight distribution.

With regard to claim 9, it is a well-known expedient in the art to make supports of metal, plastic and fiberglass because of their strength characteristics.

With regard to claims 11 and 12, it would have been obvious to one having ordinary skill in the art of patient supports at the time the invention was made to modify the device shown by

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the combination of Haley '803 and Pettit '663 such that it would include an electrical motor and a computing device. The motivation would have been to automate the device.

8. Claims 13 through 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haley (U.S. Patent No. 2,589,803) in view of Pettit (U.S. Patent No. 3,780,663) and Seide et al. (U.S. Patent No. 6,047,418).

Haley '803 in view of Pettit '663 (as set forth above) teaches all of the features of the claimed invention and claimed method steps of using with the exception(s) of the step of securely attaching a stretcher to the frame.

Seide et al. '418 show a lifting device in combination with a stretcher.

With regard to claims 13 through 20, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of using the device disclosed by Haley '803 such that it would further comprise the step of attaching a stretcher. The motivation would have been to support a stretcher on the lifting device.

Response to Arguments

9. Applicant's arguments filed 29 September 2005 have been fully considered but they are not persuasive.

In response to Applicant's statement that Haley '803 fails to teach an open frame providing for secure attachment of a stretcher, the Examiner contends that because the claim is not drawn to the combination of the support and the stretcher, the prior art of record must merely be capable of performing of performing the recited function. In this instance, the open frame (5)

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shown by Haley '803 in Figure 1 is capable of providing for the secure attachment of a stretcher most notably by the clamp (4) attached to the lower end of the frame. Similarly, the device shown by Haley '803 is capable of substantially balancing a stretcher respective to the open frame.

In response to Applicant's statement that Haley '803 fails to teach "an adjustable lifting point" as required by the claims, the Examiner notes that an ability to swivel as disclosed by the prior art in col. 4 on lines 22 through 30 meets the definition of adjustable as broadly claimed.

10. Applicant's arguments, see pages 9 through 10, filed 29 September 2005, with respect to the rejection of claims 13 through 20 have been fully considered and are persuasive. The rejection of the claims has been withdrawn.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tara L. Mayo whose telephone number is 571-272-6992. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

tlm
24 December 2005


TARA L. MAYO
PATENT EXAMINER